TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 599.

THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS & COMPANY, APPELLANTS,

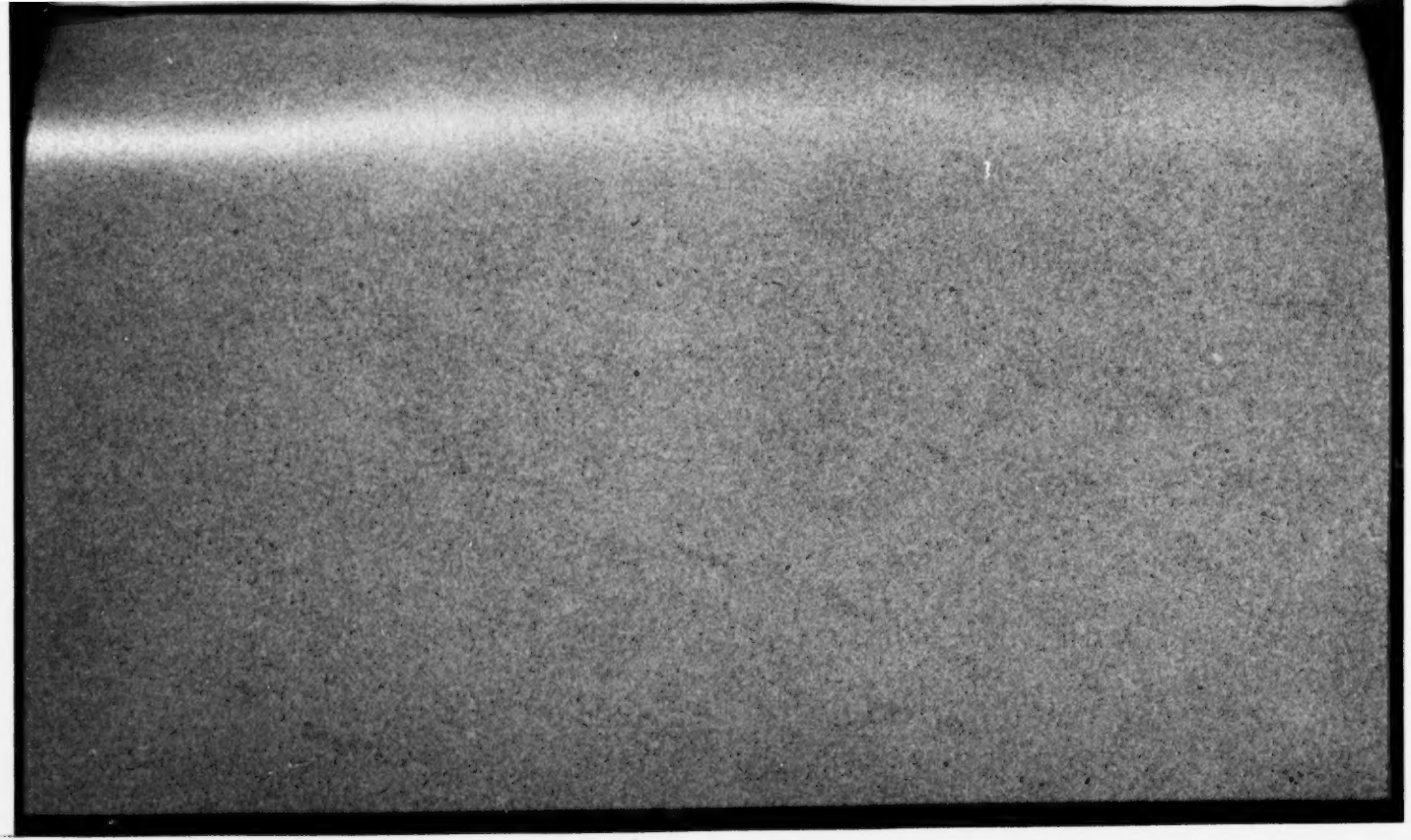
vs.

JOHN P. KLUG AND CHARLES H. WHEELER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED MARCH 17, 1902.

(18,452.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 1, 1902.

1 *Pleas in the District Court of the United States for the District of Colorado, Sitting at Denver.*

Be it remembered that heretofore and on, to wit, the 9th day of September, A. D. 1901, came the First National Bank of Denver, Colorado, the First National Bank of York, Nebraska, and Harris and Company, and filed in said court, their petition for adjudication in bankruptcy against John P. Klug.

And the said petition is in words and figures as follows, to wit:—

Creditors' Petition.

To the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado:

The petition of the First National Bank of Denver, Colorado, and the First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, respectfully shows:

That John P. Klug, of Weld county, Colorado, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business and resided at or near Evans, in the county of Weld and State and district aforesaid, and owes debts to the amount of $1,000.

2 That your petitioners are creditors of said John P. Klug having provable claims amounting in the aggregate, in excess of securities held by them to the sum of $500. That the nature and amount of your petitioners' claims are as follows: Unpaid balances due on three promissory notes; $40,596.74 balance due on note for $58,527.90, $1,807.48, balance due on note for $4,160.00 and $15,992.16 balance due on note for $16,713.67, all made by said John P. Klug, and held and owned by your petitioners respectively in order as above named, and all past due and unpaid.

And your petitioners further represent that said John P. Klug is insolvent, and that within four months next preceding the date of this petition the said John P. Klug committed an act of bankruptcy, in that he did heretofore, to wit, on the twentieth (20th) day of May, A. D. 1901, then being insolvent, transfer and convey to Charles H. Wheeler of Greeley, Weld county, Colorado, by chattel mortgage recorded in the office of the county clerk and recorder of Weld county, Colorado, on the third day of June, A. D. 1901, eighty-one (81) head of cattle, for the alleged consideration of $2,000.00; and did heretofore, to wit, on the 14th day of May, A. D. 1901, then being insolvent transfer and convey to Charles H. Wheeler of Greeley, Weld county, Colorado, by warranty deed recorded in the office of the county clerk and recorder of Weld county, Colorado, on the 18th day of May, A. D. 1901, three hundred and twenty acres of land with water rights situate in Weld county, Colorado, for the

3 alleged consideration of $2,500.00; and did heretofore, to wit, on the 11th day of May, A. D. 1901, then being insolvent,

transfer and convey to George W. Miller of Denver, Arapahoe county, Colorado, by chattel mortgage recorded in the office of the county clerk and recorder of Weld county, Colorado, on the 18th day of May, A. D. 1901, two hundred (200) head of horses, for the alleged consideration of $5,500.00; all with the intent to hinder, delay, or defraud his creditors or some of them, and while being insolvent, with the intent to prefer such creditors over his other creditors.

Wherefore your petitioners pray that service of this petition, with a subpœna, may be made upon John P. Klug as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

THE FIRST NAT. BANK OF DENVER, COLO.,
By G. E. ROSS-LEWIN, *Vice-Pres't*,
THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
By GEO. W. POST, *President*,
HARRIS AND COMPANY,
By E. K. HARRIS, *Treasurer*,
Petitioners.

[Seal First Nat'l Bank.]

Attest: W. C. THOMAS, *A. C.*

HODGES, WILSON AND HODGES, *Attorneys.*

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

G. E. Ross-Lewin, as the vice-president and on behalf of the First National Bank of Denver, Colo., and E. K. Harris as the
4 treasurer, and on behalf of Harris and Company of Denver, Colo., being two of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by said corporations are true.

Before me Eugene Elder, a notary public, this 6th day of September, A. D. 1901.

[NOTARIAL SEAL.] EUGENE ELDER,
Notary Public (Official Character) within and for the County of Arapahoe and State of Colorado.

My commission expires M'ch 22, 1905.

UNITED STATES OF AMERICA, *District of Alaska*, } ss:

George W. Post, as the president, and on behalf of the First National Bank of York, Nebraska, being one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition subscribed by said The First National Bank of York, Nebraska, are true.

Before me, William W. Wyckoff, a notary public, this 7th day of September, 1901.

[NOTARIAL SEAL.] WILLIAM W. WYCKOFF,
Notary Public (Official Character) within and for York County, State of Nebraska.

My commission expires June 8, 1906.

5 (Endorsed:) No. 622—United States district court, district of Colorado—In bankruptcy—In the matter of John P. Klug, of Evans, county of Weld, State of Colorado—Creditors' petition—Filed at 10.10 o'clock a. m., this 9th day of Sept. A. D. 1901. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioners.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. In Bankruptcy. Answer.

Now comes Charles H. Wheeler, and for answer to the petition of the First National Bank of Denver, Colorado, and the First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, to have John P. Klug declared an involuntary bankrupt, and for answer to said petition, alleges:

That he is the Charles H. Wheeler mentioned in said petition as a creditor of John P. Klug; that he is a creditor of the said John P. Klug in an amount exceeding two thousand dollars ($2,000).

The said Charles H. Wheeler further answering admits that John P. Klug of Weld county, Colorado, has for the greater portion of six months next preceding the date of the filing of said petition had a principal place of business and residence at or near Evans in Weld county, State and district of Colorado, and that he owes

6 debts to the amount of a thousand dollars.

Denies upon information and belief that the petitioners mentioned in said petition are creditors of the said John P. Klug having provable claims amounting to the aggregate, in excess of securities held by them, of five hundred dollars ($500), and alleges the fact to be that upon an accounting between the said petitioners and the said John P. Klug for the securities and property received by them, that there will be found to be no indebtedness whatsoever from the said John P. Klug to the said petitioners.

Denies upon information and belief that the said John P. Klug is insolvent, or that within four months next preceding the date of the filing of said petition, the said John P. Klug committed any act or acts of bankruptcy whatsoever.

Admits that on or about the 20th day of May, 1891, that said John P. Klug conveyed to Charles H. Wheeler by chattel mortgage

81 head of cattle to secure the payment of two thousand dollars, but expressly denies that said John P. Klug was insolvent at the time of making said chattel mortgage, or that the said mortgage was made to hinder, delay, or defraud any creditor or creditors of the said John P. Klug, or with intent to prefer the said Charles H. Wheeler over any other creditor or creditors.

Admits that the said John P. Klug conveyed to the said Charles H. Wheeler by warranty deed on the 14th day of May, 1891, 320 acres of land with the water rights, in Weld county, for the
7 consideration of twenty-five hundred dollars ($2,500) but expressly denies that the said John P. Klug was insolvent at the time of such conveyance, or that said conveyance was made to hinder, delay, or defraud any or all of his creditors, or that the same was made with the intent to prefer one creditor over another.

Admits that the said John P. Klug by chattel mortgage dated on the 11th day of May, 1891, conveyed to George W. Miller two hundred head of horses to secure the sum of fifty-five hundred dollars ($5,500) but expressly denies that the said John P. Klug was insolvent at the time of making said mortgage, or that the same was made with intent to hinder, delay, or defraud any creditor or creditors of the said John P. Klug or that the same was made with intent to prefer one creditor over another.

II.

And the said Charles H. Wheeler for a second answer and defence to said petition alleges: that he is now and was at the time of the filing of the petition for involuntary bankruptcy in this matter a creditor of said John P. Klug in an amount in excess of two thousand dollars; that the said John P. Klug is now and was at the time of the filing of said petition, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil, and therefore cannot be adjudged an involuntary bankrupt under the purview of the statute providing for involuntary bankruptcy.

8 C. C. BROWN,
Attorney for the said Charles H. Wheeler.
DANIEL SAYER,
Of Counsel.

UNITED STATES OF AMERICA, }
District of Colorado, } ss:

Charles H. Wheeler being duly sworn deposes and says; that he has read the foregoing answer and knows the contents thereof, and hereby makes solemn oath that the statements therein contained are true of his own knowledge, except as to the matters and things therein alleged upon information and belief, and that as to those matters he believes it to be true.

CHARLES H. WHEELER.

Subscribed and sworn to before me this 30th day of September, A. D. 1901.

My commission expires Sept. 28th, 1902.

[SEAL.] CLARENCE T. NEILL,
Notary Public.

(Endorsed:) 622—In the district court of the United States for the district of Colorado—In the matter of John P. Klug—Answer of Charles H. Wheeler, a creditor to petition for adjudication.—Filed Oct. 4, 1901—4.10 p. m. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado. }

In the District Court of the United States for the District of Colorado.

9 In the Matter of JOHN P. KLUG. In Bankruptcy.

Amendment to Creditors' Petition.

Now come The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, heretofore filed in the above-entitled cause on the 9th day of September, A. D. 1901, and pursuant to leave of this court first had and obtained, and as and for an amendment to their said petition, allege as follows: That the said John P. Klug is now, and was at the time of filing the creditors' petition herein, and has been for three and one-half years last past, engaged chiefly in the business of dealing in and buying and selling cattle and horses at or near Evans, Weld county, Colorado, and is not now, and was not at the time of filing the creditors' petition herein, and has not been for three and one-half years last past, a wage-earner nor engaged chiefly in farming or the tillage of the soil.

Wherefore your petitioners pray that the said John P. Klug may be adjudged by the court to be a bankrupt within the purview of the acts of Congress relating to bankruptcy, as they have heretofore prayed in their said petition.

THE FIRST NAT. BANK OF DENVER,
By G. E. ROSS-LEWIN, *Vice-Pres't.*
THE FIRST NATIONAL BANK OF YORK,
10 By GEO. W. POST, *President.*
HARRIS AND COMPANY,
By E. K. HARRIS, *Treasurer.*

HODGES, WILSON AND HODGES, *Attorneys.*

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

G. E. Ross-Lewin, as the vice-president, and on behalf of the First National Bank of Denver, Colorado, and E. K. Harris, as the treasurer, and on behalf of Harris and Company of Denver, Colorado, being two of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing amendment to their petition, subscribed by said The First National Bank of Denver, Colorado, and Harris and Company of Denver, Colorado, are true.

Before me C. S. Haughwout this 23d day of October, A. D. 1901. My commission expires February 7, 1904.

[NOTARIAL SEAL.] C. S. HAUGHWOUT,
Notary Public.
(Official character.)

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

George W. Post as the president, and on behalf of the First National Bank of York, Nebraska, being one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing amendment to the petition, subscribed by said The First National Bank of York, Nebraska, are true.

Before me a notary public, this 21st day of October, A. D. 1901.

[NOTARIAL SEAL.] E. A. GILBERT,
Notary Public.
(Official character.)

11 My commission expires Apr. 16, 1907.

(Endorsed:) No. 622—United States of America, district of Colorado—In the district court of the United States—In the matter of John P. Klug, in bankruptcy—Amendment to creditors' petition—Filed Oct. 23, 1901, 12.05 p. m. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. In Bankruptcy.

Now comes John P. Klug, alleged bankrupt, and for an answer to the petition as well as the amendment to the petition of the First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, to have the said John P. Klug declared an involuntary bankrupt, alleges:

First. Admits that he has for the greater portion of six months next preceding the date of the filing of said petition had his principal place of business and resided at or near Evans in the county of Weld, State and district of Colorado, and that he owes debts to the amount of a thousand dollars.

12 Second. Denies that the petitioners in said petition are creditors of said John P. Klug having provable claims amounting to the aggregate, in excess of securities held by them of $500; but alleges the fact to be that upon an accounting between the said petitioners and said John P. Klug for the securities and property received by them there will be found no indebtedness whatsoever from the said John P. Klug to the said petitioners.

Third. Denies that he is insolvent, or that within four months next preceding the date of the filing of said petition he committed any act or acts of bankruptcy whatsoever.

Admits that on or about the 20th day of May, 1891, he conveyed to Charles H. Wheeler by chattel mortgage 81 head of cattle for the consideration of $2,000, but denies that he was insolvent at the time of making said chattel mortgage, or that the said chattel mortgage was made to hinder, delay, or defraud any creditor or creditors of his, or with intent to prefer the said Charles H. Wheeler over any other creditor or creditors.

Admits that he conveyed to said Charles H. Wheeler by warranty deed on the 14th day of May, 1891, 320 acres of land with the water rights in Weld county for the consideration of $2,500, but expressly denies that he was insolvent at the time of such conveyance or that said conveyance was made to hinder, delay, or defraud any or all of his creditors, or that the same was made with the intent to prefer one creditor over another.

13 Admits that he, by chattel mortgage dated on the 11th day of May, 1891, conveyed to George W. Miller 200 head of horses to secure the sum of $5,500, but denies that he was insolvent at the time of making such mortgage, or that the same was made with the intent to hinder, delay, or defraud any creditor or creditors of his, or that the same was made with intent to prefer one creditor over another.

Denies that he is now or was at the time of filing the creditors' petition herein, or that he has been for three and a half years last past, or for any length of time whatsoever, engaged chiefly in the business of dealing in or buying or selling cattle or horses at any place whatsoever, or that he is not now or that he was not at the time of filing of the creditors' petition herein, or that he has not been for three and a half years last past or for any part of said time a wage-earner or engaged chiefly in farming or the tillage of the soil.

For a second and further answer to the said petition and amendment thereto alleges: That he is now and was at the time of the filing of the petition and amendment thereto in this matter, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil, and therefore cannot be adjudged an in-

voluntary bankrupt under the purview of the statute providing for involuntary bankruptcy.

C. C. BROWN,
Attorney for the said John P. Klug.
DANIEL SAYER, *Of Counsel.*

14 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

John P. Klug being duly sworn deposes and says; that he has read the foregoing answer and knows the contents thereof, and hereby makes solemn oath that the statements therein contained are true of his own knowledge, except as to the matters and things therein alleged upon information and belief, and that as to those matters he believes it to be true.

JOHN P. KLUG.

Subscribed and sworn to before me this 28th day of October, A. D. 1901.

My commission expires June 28th, 1904.

[SEAL.]

GEORGE W. COLE,
Notary Public.

(Endorsed:) 622—In the district court of the United States for the district of Colorado—In the matter of John P. Klug, in bankruptcy—Answer of respondent—Filed Oct. 28, 1901, 11.50 a. m. Charles W. Bishop, clerk—C. C. Brown, attorney for said John P. Klug, —— —— of counsel.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. No. 622. In Bankruptcy.

15 *The Replication of the Petitioning Creditors to the Answer of Charles H. Wheeler Herein.*

Come now The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, and repliants saving and reserving unto themselves now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of Charles H. Wheeler herein, for replication thereunto say:

That they do and will aver, maintain, and prove their said petition to have John P. Klug adjudged an involuntary bankrupt herein to be true, certain, and sufficient in law to be answered unto

by the said Charles H. Wheeler, and that the said answer of the said Charles H. Wheeler is uncertain, untrue, and insufficient in law to be replied to by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct and humbly pray, as in and by their said petition herein they have already prayed.

THE FIRST NATIONAL BANK OF DENVER, COLORADO,
16 THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
HARRIS AND COMPANY,
Of Denver, Colorado, Petitioners,
By HODGES, WILSON AND HODGES,
Their Attorneys.

(Endorsed:) No. 622—In the United States district court, district of Colorado—In the matter of John P. Klug, in bankruptcy—Replication to answer of Charles H. Wheeler—Filed Nov. 2, 1901, 3.15 p. m., Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. No. 622. In Bankruptcy.

The Replication of the Petitioning Creditors to the Answer of John P. Klug Herein.

Come now The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, and repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of advantage of exception which
17 may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of John P. Klug herein, for replication thereunto say:

That they do and will aver, maintain, and prove their said petition to have said John P. Klug adjudged an involuntary bankrupt herein to be true, certain and sufficient in law to be answered unto by the said John P. Klug; and that the said answer of the said

John P. Klug is uncertain, untrue, and insufficient in law to be replied to by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said petition herein they have already prayed.

THE FIRST NATIONAL BANK OF DENVER, COLORADO,
THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
HARRIS AND COMPANY,
Of Denver, Colorado.
Petitioners,
By HODGERS, WILSON AND HODGES,
Their Attorneys.

(Endorsed:) No. 622—In the United States district court, district of Colorado—In the matter of John P. Klug, in bankruptcy—Replication to answer of John P. Klug—Filed Nov. 2, 1901, 18 3.15 p. m. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

Forty-seventh Day, November Term.

MONDAY, *January 20th, A. D.*, 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. 622. In Bankruptcy.

At this day come The First National Bank and others, petitioning creditors, by George L. Hodges, Esquire, their attorney, and the respondent, by C. C. Brown, Esquire, his attorney, also comes. And thereupon comes a jury, to wit:

Conrad Frick	Henry Kneisel	George Stobbs
Charles B. Clark	James Bartle	George Tuck
Frederick O. Vaille	William Wise	Thomas W. Rayburn
Charles E. Allen	C. N. Priddy, and	Edward Wilson.

twelve good and lawful men, and they are each duly selected and tried and empanelled and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence. And thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

And the said jurors being now each duly cautioned by the court

not to converse among themselves, or with others touching
19 this cause, or the evidence heard or any part thereof, nor to listen to such conversation of others, are permitted to retire to meet the court at its next incoming.

Forty-eighth Day, November Term.

TUESDAY, *January* 21*st*, *A. D.* 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. 622. In Bankruptcy.

At this day come again the parties in this matter by their attorneys respectively, and the jurors heretofore duly empanelled and sworn in this matter being now all here present and in the jury-box the trial of the issues herein joined is resumed.

And the said jurors having heard the evidence produced herein and being thereto duly instructed by the court, upon their oath do say they find the issues herein joined for the respondent, and that he is a farmer within the meaning of the bankrupt act.

Wherefore, it is considered by the court that the petition for adjudication herein be and the same is hereby dismissed out of this court, and that the respondent go hence hereof without day, and have and recover of and from the petitioning creditors his costs by him in this behalf laid out and expended to be taxed, and have execution therefor.

20 And thereupon, the petitioning creditors pray an appeal to the United States circuit court of appeals for the eighth circuit which is allowed to them, but upon the condition nevertheless that they give bond on such appeal in the sum of two hundred and fifty dollars ($250.00).

UNITED STATES OF AMERICA, *District of Colorado*, } *ss*:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

Findings of Fact and Conclusions of Law.

The above-entitled matter coming on to be heard specially upon the issues joined therein, upon the petition and amendment to the petition of the First National Bank of Denver, Colorado, the First National Bank of York, Nebraska, and Harris and Company (incorporated), and the answer of the said John P. Klug thereto, wherein the said petitioners aver that the said John P. Klug is not, and was not at the time of filing of the said petition, and had not been for three and one-half years prior thereto, a wage-earner nor engaged chiefly in farming or the tillage of the soil; and the said respond-

ent, by his said answer, denies the said allegations, thereby raising the issue as to whether or not this court hath jurisdiction to try the issues joined by the said petition and answer as to the
21 alleged acts of bankruptcy and insolvency therein set up and denied; and the court having called a jury for the purpose of trying the said issue, under its directions and instructions, and having heard the evidence introduced on behalf of said petitioners and in support of the said allegations of the said petition, that the said respondent was not and had not been for a period of three and one-half years a person engaged chiefly in farming or the tillage of the soil; and upon motion and application of counsel for said respondent that the court instruct the said jury to find said issue for the respondent, and to dismiss the said petition; and as well upon the request of counsel for petitioners, that the court instruct the said jury "that the word 'farming' as used in the act under consideration (bankrupt act 1898, section 4, *b*) is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil, is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops" and the court having considered the said evidence, and the arguments of counsel in support of the said motions or requests to instruct the said jury; and in pursuance of the requirements of the third paragraph or subdivision of rule or order XXXVI
22 of the General Orders in Bankruptcy, promulgated by the Supreme Court of the United States at the October term A. D. 1898 of said court, doth make the following its findings of fact and conclusions of law with respect to the said issues tried as aforesaid.

Facts.

1. That John P. Klug, the respondent, has been for more than ten years last past, a resident of Weld county, Colorado, and during such time has lived upon a tract of land secured from the United States under and through the homestead and pre-emption laws.

2. That from time to time, during such period, the respondent acquired other lands, until at the time of the institution of these proceedings, he owned about 2,000 acres of land in contiguous tracts in Weld county, Colorado.

3. That the respondent has placed improvements upon these lands until at the time of the institution of these proceedings they consisted chiefly of a dwelling-house, barn, cattle sheds, and corrals, wells, windmill, watering holes, and sixty miles of fencing. The fence being principally of two strands of wire, some little with three strands, and rather inferior posts.

4. That in addition to the 2,000 acres of land owned by said respondent, he had, under lease from railroads and the State of Col-

orado (school sections) and unoccupied lands, a more or less enclosed range of about 18000 acres.

5. That during the year 1900, the respondent purchased a
23 tract of land containing about 150 acres, 80 acres of which were under cultivation, principally in alfalfa, a few acres in oats. This land was sold in the spring of the year 1901.

6. That in the year 1900 the respondent leased a tract of 35 or 40 acres of land, under cultivation in alfalfa.

7. That the larger tract of land above mentioned was mostly what is known as "grazing land." That from 400 to 700 acres of said tract stood in wild hay, a large part of which being hay known as "blue joint," superior in quality to ordinary wild hay.

8. That the larger tract of land referred to had no water rights in connection therewith, and was not irrigated. That the crop of wild hay mentioned, depended wholly upon floods and waterspouts, in the spring, coming down a dry creek called the "Box Elder." That these floods and waterspouts were irregular in time and quantity. That some seasons they were extensive—a good crop of wild hay resulting; at other times, the floods were small—with a consequent diminution in the size of the hay crop. That the hay crop grown upon this tract depended solely upon such natural conditions.

9. That the 80 acres of the tract purchased by the respondent in 1900, and the 35 or 40 acres leased in the same year, was in alfalfa and was irrigated.

10. That the average crop of wild hay from the wild-hay land was from 200 to 400 tons according to the season, and the amount of land covered by the floods.

24 11. That from the 80 acres of the tract of land purchased in 1900, there *was* cut about 125 tons of alfalfa, and from the 35 or 40 acres of leased land, about 75 tons of alfalfa.

12. That on the larger tract of land referred to, attempts were made by the respondent to cultivate 10 or 15 acres of land, in a garden, and some small grains. The grain crop did not amount to anything and cattle were permitted to eat it off the ground. Some watermelons and pumpkins were produced in the garden.

13. The implements which were owned by the respondent consisted of one plow, mower, several hay rakes, and other implements for cutting and stacking hay, and several wagons.

14. That for a period of three years and more, prior to the institution of these proceedings, the respondent kept upon the large tract of land referred to at all times, a large number of horses, varying from 500 to 700 head.

15. That during the same period, the respondent kept upon said tract of land a herd of cattle averaging about 2,000 head, the greater number of which were cows.

16. That in addition to the grazing facilities on said tract of land, and the wild and cultivated hay grown thereon, the respondent purchased large quantities of feed for the stock above mentioned, in one year having purchased as much as 1700 tons of hay and several car-loads of grain.

17. That in addition to running the horses and cattle on
25 the tract of land above referred to, the respondent had been engaged during the three years immediately preceding the institution of these proceedings in buying and selling cattle, the transactions in the aggregate amounting to about 1,000 to 1,200 head.

18. That the respondent held himself out to the world, by means of advertisements on letter-heads and stationery used in his correspondence, to be a dealer in, as well as a breeder of cattle and horses.

19. That, from the evidence, it appears that the respondent was *not* chiefly engaged in the tillage or the cultivation of the soil, and that the horses and cattle kept and *feed* by him were not sustained chiefly by the wild and cultivated hay crops produced from said tracts of land above referred to.

20. That the respondent is chiefly engaged in the buying, selling, breeding, and raising of horses and cattle. That said horses and cattle were grazed upon the said tract of land belonging to respondent, and upon the adjacent leased and public ranges, and were *feed* with the wild and cultivated hay crops produced from said land and with hay and grain purchased from others, in quantity and value in excess of the crops produced from said land.

Conclusions of Law.

1. That the keeping and growing of cattle, sheep, horses, hogs, chickens, and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from
26 *sealing* in, buying, and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used.

2. That the word "farming" in the bankruptcy act of 1898, is something more than tilling the soil, and includes and comprehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit-growers, vine-growers, and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature, or by cultivation, it is still farming.

3. That the word "farming" and the phrase "the tillage of the soil" connected by the disjunctive particle "or" in the association in which they occur in the bankrupt act of 1898, are not synonomous they do not have the same meaning, nor does the phrase "the tillage of the soil" in such association serve to limit the meaning of

the word "farming" so as to mean farming by the tillage of the soil.

4. That in view of the conclusions above expressed the re-
27 spondent is a farmer and "engaged chiefly in farming" within the meaning of section 4*b* of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court, therefore, has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein.

5. That the inst-uction requested by counsel for petitioners is refused, and the jury is instructed, upon the testimony, to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898, and the petition is dismissed at cost of petitioners.

MOSES HALLETT,
Dist. Judge.

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Findings of fact and conclusions of law—Filed February 17th, 1902, at 10 o'clock a. m. as of January 21st, 1902, by direction of district judge, Charles W. Bishop, clerk U. S. district court, district of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

The First National Bank of Denver, Colorado; The First
28 National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, the petitioners in the matter above entitled, conceiving themselves aggrieved by the order of the said court entered therein on January 21st, A. D. 1902, dismissing their petition for the adjudication of said John P. Klug as an involuntary bankrupt, do*th* hereby appeal from said order to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record and papers consisting of the pleadings, the judgment or decree dismissing said petition, and the finding of facts and conclusions of law in said proceedings, duly authenticated, may be sent to the Supreme Court of the United States.

HODGES, WILSON AND HODGES,
Attorneys for Petitioners and Appellants,
603–'7 *Ernest and Cranmer Building, Denver, Colorado.*

Denver, Colorado, February 5th, A. D. 1902.

And now, to wit, on —— — A. D. 1902, it is ordered that the appeal be allowed as prayed for, and bond on said appeal is fixed at the sum of — dollars ($—).

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Prayer for appeal—Filed Feb'y 5, 1902, at 10.05 o'clock a. m., Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

29 Sixty-first Day, November Term.

WEDNESDAY, *February 5th, A. D.* 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. In Bankruptcy. 622.

At this day come the First National Bank of Denver, and others, petitioning creditors, by George L. Hodges, Esquire, their attorney, and thereupon, on his motion, it is ordered by the court that so much of the order of the court heretofore and on, to wit, the twenty-first day of January, A. D. 1902, entered herein, as allows an appeal to the United States circuit court of appeals for the eighth circuit, be and the same is hereby vacated, set aside, and for naught held.

And thereupon the First National Bank of Denver, and others, petitioning creditors, pray an appeal to the Supreme Court of the United States from the order of the court dismissing the petition for adjudication herein. Which appeal is hereby allowed to them but upon the condition, nevertheless, that said petitioning creditors give bond on such appeal in sum of two hundred and fifty dollars ($250.00).

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

30 *Assignment of Errors.*

Come now The First National Bank of Denver, Colorado; The First National Bank of York, Nebraska; and Harris and Company, (incorporated) the petitioners in the matter above entitled, to have the said John P. Klug adjudged an involuntary bankrupt, and aver that in the record and proceedings in said above-entitled proceedings the court committed manifest errors to the detriment and injury of the said petitioners, in the following particulars, to wit:

First. The court erred in its first conclusion of law, in holding "that the keeping and growing of cattle, sheep, horses, hogs, chickens, and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from dealing in, buy-

ing, and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used."

Second. The court erred in its second conclusion of law in holding "that the word 'farming' in the bankruptcy act of 1898, is something more than tilling the soil, and includes and com-
31 prehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit-growers, vine-growers and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature or by cultivation, it is still farming."

Third. The court erred in its third conclusion of law in holding "that the word 'farming' and the phrase 'the tillage of the soil' connected by the disjunctive particle 'or' in the association in which they occur in the bankrupt act of 1898, are not synonomous—they do not have the same meaning, nor does the phrase 'the tillage of the soil' in such association serve to limit the meaning of the word 'farming' so as to mean farming by the tillage of the soil."

Fourth. The court erred in its fourth conclusion of law in holding "that in view of the conclusions above expressed, the respondent is a farmer and 'engaged chiefly in farming' within the meaning of section 4*b* of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court therefore has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein."

Fifth. The court erred in its conclusions of law as applied to the facts found, that the respondent is not subject to be adjudged
32 an involuntary bankrupt.

Sixth. The court erred in holding that it had no jurisdiction in said proceeding to try the issues of insolvency and bankruptcy raised by the petition and answer therein.

Seventh. The court erred in refusing to instruct the jury in accordance with the request of petitioners' counsel, "that the word 'farming' as used in the act under consideration, is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil,' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

Eighth. The court erred in instructing the jury to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898.

Ninth. The court erred in dismissing petitioners' petition herein to have the said John P. Klug adjudged an involuntary bankrupt.

Tenth. The court committed manifest errors in divers other particulars, as appears upon the record in said proceedings, to the detriment and injury of said petitioners therein.

33 Wherefore, said petitioners pray that said order, judgment, and decree may be wholly reversed, set aside, and for naught held.

HODGES, WILSON AND HODGES,
Attorneys for Petitioners.

(Endorsed:) No. 622—In bankruptcy—United States of America district of Colorado—In the district court—In the matter of John P. Klug—Assignment of errors—Filed Feb. 21, 1902, 3.30 p. m., Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents, that we, the First National Bank of Denver, Colorado, as principal, G. E. Ross-Lewin and Thomas Keeley, as sureties, are held and firmly bound unto John P. Klug of Weld county, Colorado, in the full and just sum of two hundred and fifty dollars ($250.00), to be paid to the said John P. Klug, his heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of February in the year of our Lord one thousand nine hundred and two.

Whereas lately at the November term, A. D. 1901, of the
34 district court of the United States, for the district of Colorado, in bankruptcy, sitting at Denver, in a proceeding in bankruptcy pending in said court, wherein The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, were petitioning creditors, and John P. Klug was respondent, and one Charles H. Wheeler appeared and answered said creditors' petition, to have said John P. Klug adjudged an involuntary bankrupt, judgment, order or decree was rendered and entered against the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, petitioning creditors, dismissing their petition; and the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, having prayed and been allowed, an

appeal to the Supreme Court of the United States to reverse the judgment, order, or decree of the said district court; and a citation directed to the said John P. Klug, and the said Charles H. Wheeler, citing and admonishing them to be and appear in the Supreme Court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company
35 (incorporated) of Denver, Colorado, shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

THE FIRST NAT. BANK OF DENVER,
By G. E. ROSS-LEWIN, *V. Pres.* [SEAL.]
GEORGE E. ROSS-LEWIN. [SEAL.]
THOMAS KEELEY. [SEAL.]

Sealed and delivered in presence of—
D. EDGAR WILSON.

Attest:

[Seal First Nat. Bank.]
THOMAS KEELEY, *Sec'y.*

Approved: Feb'y 21st, 1902.

MOSES HALLETT, *Judge.*

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

G. E. Ross-Lewin and Thomas Keely, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate in Arapahoe county, Colorado, the sum below set opposite his name, that is to say:

As to each, five hundred dollars, over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

GEORGE E. ROSS LEWIN.
THOMAS KEELEY.

Subscribed and sworn to before me at Denver, this 21st day of February, A. D. 1902

My commission expires Feb. 7, 1904.

[NOTARIAL SEAL.] C. S. HAUGHWOUT,
Notary Public.

36 (Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Appeal bond—Filed Feb. 21, 1902, 3.30

p. m., Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for — 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

The clerk of the district court of the United States for the district of Colorado, Denver, Colorado:

You will please prepare a transcript of the following papers filed and of record in the above-entitled cause, for an appeal of the above-entitled cause, by the petitioning creditors therein, to the Supreme Court of the United States:

Creditors' petition,
Amendment to creditors' petition,
Answer of John P. Klug,
Answer of Charles Wheeler;
Replication to answer of John P. Klug,
Replication to answer of Charles Wheeler,
37 Judgment or decree,
Findings of fact and conclusions of law,
Prayer for an appeal, and order of allowance,
Appeal bond,
Assignment of errors,
Citation.

HODGES, WILSON AND HODGES,
Attorneys for Petitioning Creditors.

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Præcipe for transcript—Filed Feb. 26, 1902, 1.45 p. m. Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

38 *Citation on Appeal.*

U. S. Circuit Court of Appeals.

UNITED STATES OF AMERICA, *Eighth Judicial Circuit,* } ss:

In the Supreme Court of the United States.

The United States of America to John P. Klug and Charles H. Wheeler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty

days from and after the day this citation bears date, pursuant to an appeal allowed by the district court of the United States for the district of Colorado, sitting at Denver, in the matter of John P. Klug in bankruptcy, wherein The First National Bank of Denver, Colorado, The First National Bank of York Nebraska and Harris & Company of Denver are appellants and you are appellees to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 21st day of February, A. D. 1902.

[Seal United States District Court, District of Colorado.]

MOSES HALLETT, *Judge.*

Attest: CHARLES W. BISHOP, *Clerk.*

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } ss:

On this 3d day of March A. D. 1902, personally appeared Dewey C. Bailey, Jr., before me, the subscriber, clerk of the circuit court of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Cortland C. Brown, attorney for the appellees.

DEWEY C. BAILEY, JR.,
Dep. U. S. Marshal.

Sworn to and subscribed before me this 3d day of March, A. D. 1902.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY,
Clerk U. S. Circuit Court.

[Endorsed:] C. C. Brown No. 622 #1415 Supreme Court of the U. S. In the matter of John P. Klug In bankruptcy Citation. Filed in district court of the United States for the district of Colorado, this 3rd day of March A. D. 1902, 10.45 a. m. By Charles W. Bishop, clerk. Hodges, Wilson and Hodges, attorneys for petitioning creditors.

39 UNITED STATES OF AMERICA, *District of Colorado.* } ss:

I, Charles W. Bishop, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to thirty-seven (37), both inclusive, to be a true, perfect, and complete transcript and copy of

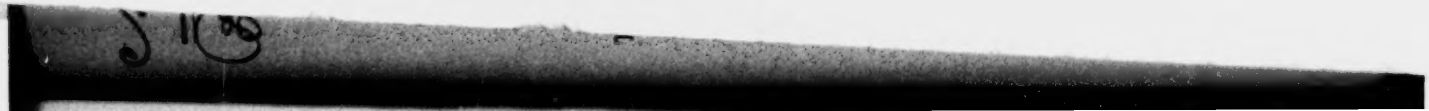
the creditors' petition, amendment to creditors' petition, answer of John P. Klug, answer of Charles Wheeler, replication to answer of John P. Klug, replication to answer of Charles Wheeler, judgment or decree, findings of fact and conclusions of law, prayer for an appeal and order of allowance, appeal bond, assignment of errors and præcipe for transcript, heretofore entered of record or filed in said court, and in the matter of John P. Klug, in bankruptcy, in said court, as fully and completely as the same still remain on file or of record in my office. at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this third day of March, A. D. 1902.

[Seal United States District Court, District of Colorado.]

CHARLES W. BISHOP, *Clerk.*

Endorsed on cover: File No. 18,452. Colorado—D. C. U. S. Term No. 599. The First National Bank of Denver Colorado, The First National Bank of York Nebraska & Harris & Company—appellants—*vs.* John P. Klug and Charles H. Wheeler— Filed March 17, 1902.



Office Supreme Court U.S.
FILED
APR 11 1902
JAMES H. McKENNEY,
Clerk.

No. 599.

Brf. of Greene & Breckenridge for Appellant.

Supreme Court of the United States.

Filed April 11, 1902.

OCTOBER TERM, 1901.

No. 599.

THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS AND COMPANY, APPELLANTS,

vs.

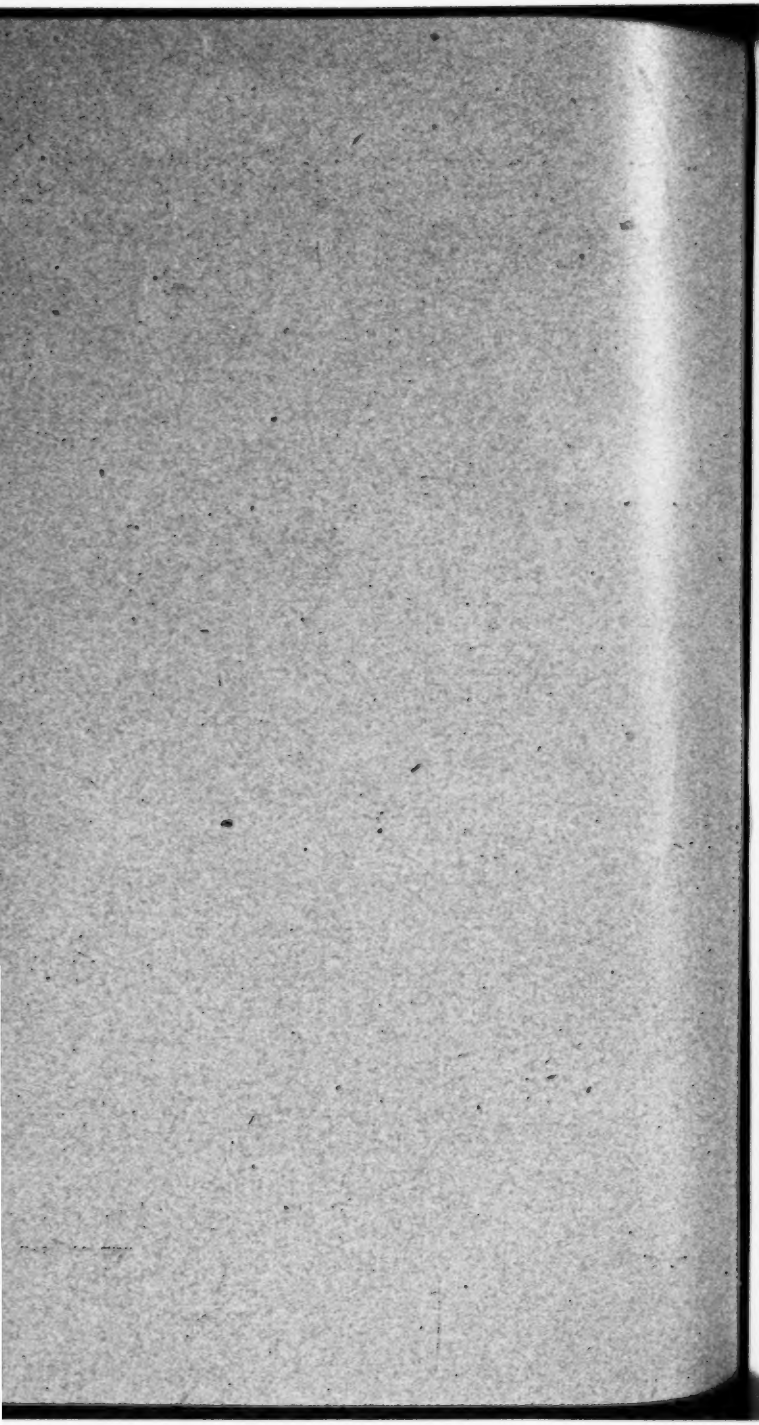
JOHN P. KLUG AND CHARLES H. WHEELER, APPELLEES.

BRIEF AND ARGUMENT OF APPELLANTS.

GEORGE L. HODGES,
Denver, Colorado,
Of Counsel.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
Omaha, Nebraska,
Attorneys for Appellants.

LEW W. BABCOCK, PRINTER, OMAHA.



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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 599.

THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS AND COMPANY, APPELLANTS,

vs.

JOHN P. KLUG AND CHARLES H. WHEELER, APPELLEES.

BRIEF AND ARGUMENT OF APPELLANTS.

STATEMENT OF THE CASE.

Appellants, The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris & Company, (a corporation), of Denver, Colorado, creditors of John P. Klug of Weld county, state of Colorado, to the amount of fifty-eight thousand, three hundred and ninety-six dollars and thirty-eight cents, ($58,396.38), joined in a petition to the district court of the United States for the district of Colorado, alleging the residence of the parties; that the appellants, who will be hereinafter referred to as petitioners, were creditors of John P. Klug; the amount and nature of their respective claims; the fact of insolvency, and certain acts of bankruptcy that had been committed;

and praying that said John P. Klug be adjudged a bankrupt (1).

Subsequently, by consent of parties and leave of court, the petitioners filed the following amendment (5), to their petition:

"That the said John P. Klug is now, and was at the time of filing the creditors' petition herein, and has been for three and one-half years last past, engaged chiefly in the business of dealing in and buying and selling cattle and horses at or near Evans, Weld county, Colorado, and is not now, and was not at the time of filing the creditors' petition herein, and has not been for three and one-half years last past, a wage-earner nor engaged chiefly in farming or the tilling of the soil."

Thereafter appellee, Klug (who is also hereinafter referred to as respondent), filed his answer to said petition, alleging (6), that he "is now and was at the time of the filing of said petition, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil." Said answer contained other allegations, denying and putting at issue the allegations of indebtedness in the amounts stated, of insolvency and acts of bankruptcy contained in the petition.

Charles H. Wheeler, a creditor, holding alleged preferences, filed an answer of like import (3) to that of the respondent Klug.

To these answers, petitioners filed replications. (8, 9.)

In due course the cause came on for trial, and the court impanelled a jury to hear the evidence upon and determine the issue raised by the petitioners' allegation *that the respondent Klug was not a person engaged chiefly in farming or the tillage of the soil*, and the respondent Klug's allegation in

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NOTE: References in figures are to pages of the printed record.

his answer that he was so engaged; *and evidence was not permitted to be introduced upon any other issue.*

The petitioners' evidence having been submitted, counsel for respondent Klug moved the court to instruct the jury to find said issue for the respondent. (11, 12.)

Counsel for petitioners then moved the court to instruct the jury as follows:

"That the word 'farming,' as used in the act under consideration (bankrupt act 1898, section 4, b.), is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage of cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil, is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

(See findings of court p. 12.)

The arguments of counsel having been heard in support of the respective motions for instructions to the jury the court denied the motion of counsel for the petitioners, and delivered an oral decision upon the motion of counsel for the respondent Klug as follows:

"In the construction of the provision of the bankruptcy act which is under discussion, I think it is well to recall that the first bankruptcy acts were limited to traders and merchants; that is to say, it was understood in the earlier acts that bankruptcy is applicable only to commercial transactions; and this, in my judgment, requires that when there is an exemption from the terms an act it shall be liberally construed. If an act is general in its terms, as the act of 1898 is, and there are classes of people exempted from its provisions, the construction in respect to those classes is very different from what it would be in criminal law. So when in this act it is said that the business of farming or tilling the soil shall not be within the terms of the act as to in-

voluntary bankruptcy, I think it is impossible to say that these words are of the same meaning. That is to say, that farming is no more than tilling the soil. It is true that is the primary meaning of the word 'farming,' but that meaning grew up in a country where the soil may be tilled anywhere and everywhere; that is to say, in countries which are watered from the clouds and not by irrigation. It was natural that, in a country where there is an abundance of rain that farming shall be understood to mean generally the cultivation of the soil. It may have a different meaning in dry countries where certain kinds of farming may be carried on without cultivating the soil.

I understand the keeping and growing of cattle sheep, horses, hogs, chickens and domestic animals of all kinds has always been a branch of farming, and a branch which is quite distinct from dealing in, buying and selling and vending the same kind of animals. That is true, in a small way, everywhere and in all countries—in Ireland where they keep a few pigs in the dwelling house; in Labrador where they keep chickens around under the sofas and settees—if they have such things—and some dogs outside to carry them over the snow; and in Texas where they have ranches which are fifty or one hundred miles square; it is a business of farming all around through all countries and in all lands to keep domestic animals. Therefore, upon ranches in this country where they may keep cattle and sheep, and graze them even upon the public lands, if they have a fixed habitation and a place where these animals are grown, I understand that to be farming; and I believe it to be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement was ever used. And so in respect to men who buy and sell sheep in this country,—and there are a large number in recent years,—to fat them for market, they are not sheep dealers simply because they buy and sell sheep; they are farmers; they get what provender they can from the lands which they cultivate; they buy more alfalfa from their neighbors, and they feed sheep from fall until spring and sell them in the spring.

I think the respondent here is a farmer within the meaning of this act of congress, even if he bought cattle from time to time, and kept them upon lands which he owned,

and grazed them there; he got some hay from the lands for feeding them and he bought more hay, and perhaps grain for feeding them from others; in other words, the word 'farming' in the bankruptcy act is something more than tilling the soil, in this country at least, and it includes and comprehends all the avocations of husbandry and agriculture; it includes sheep-raising, hog-raising, chicken-raising; it includes fruit raisers, vine growers, and the people who are raising melons down at Rocky Ford—I think they call themselves 'horticulturists,' or something of that kind. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature or by cultivation, it is still farming, in my judgment. In that view, I think the jury may, upon this testimony, find that the respondent is a farmer within the meaning of this act."

And thereupon the court instructed the jury to return a verdict that the respondent Klug was a farmer, or "engaged chiefly in farming" within the meaning of the bankrupt act; and such verdict having been returned by the jury, the court dismissed the petition herein for want of jurisdiction. (11.)

Thereafter, the court, in accordance with order XXXVI of the General Orders in Bankruptcy, made its findings of fact and conclusions of law, and entered the same *nunc pro tunc*, as of the date of the dismissal of the said petition. (12.)

The court found from the evidence (pp. 12 to 14), that the respondent Klug, at the time of filing the petition, owned 2,000 acres in contiguous tracts, part of which had been acquired under the United States homestead and pre-emption laws (findings 1 and 2); that he was the lessee of a range of 18,000 acres (finding 4); that the tract of 2,000 acres was improved with a dwelling house, barn, sheds and corrals, wells and fencing (finding 3); that he owned one plow, mower, several hay rakes, and other implements for cutting and stacking hay, and several wagons (finding 13); that the

tract of 2,000 acres was mostly grazing land, from 400 to 700 acres standing in wild hay (finding 7; that there were no water rights in connection with said tract (finding 8); that he had attempted to cultivate a tract of 10 or 15 acres of said land, with little *success (finding 12)*; that upon said 2,000 acres the respondent kept horses varying in number from 400 to 700 head (finding 14); that he had, in addition thereto, a herd of cattle, averaging 2,000 head (finding 15); that the wild hay gathered from the tracts mentioned averaged from 200 to 400 tons per year (finding 10); that in addition to the grazing facilities and the wild hay, respondent purchased large quantities of feed for his cattle and horses (finding 16); that in 1900 respondent purchased a tract of land, eighty acres of which were under cultivation, principally in alfalfa, this land being sold in the spring of 1901 (finding 5); that in the year 1900 respondent leased 35 or 40 acres of land in alfalfa (finding 6); that the addition of the crops from these last mentioned tracts to the wild hay crop of 1900, did not make sufficient feed for the cattle and horses (finding 16); that respondent held himself out to the world, by means of advertisements on letterheads and stationery used in his correspondence, to be a dealer in, as well as a breeder of cattle and horses (finding 18); that during the three years immediately prior to the institution of these proceedings, the respondent bought and sold from 1,000 to 1,200 head of cattle, not included in the horses and cattle grazed by him aforesaid (finding 17); that the respondent was chiefly engaged in the buying, selling, breeding and raising of horses and cattle, and was not chiefly engaged in the tillage or the cultivation of the soil, and that the horses and cattle kept and fed by him were not sustained chiefly by the wild and cultivated hay crops produced from the tracts of land above mentioned, but were grazed upon the tracts of

land and the leased and public ranges mentioned, and fed with the wild and cultivated hay crops mentioned, and with hay and grain purchased from others, in quantity and value in excess of the crops of hay produced from said tracts of land (findings 19 and 20.)

The conclusions of law stated by the court appear in the record (14) and are also set forth in the following

ASSIGNMENTS OF ERROR.

First: The court erred in its first conclusion of law, in holding "that the keeping and growing of cattle, sheep, horses, hogs chickens and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from dealing in, buying and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed a habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used."

Second: The court erred in its second conclusion of law in holding "that the word 'farming' in the bankruptcy act of 1898, is something more than tilling the soil, and includes and comprehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit growers, vine growers and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature, or by cultivation, it is still farming."

Third: The court erred in its third conclusion of law in holding "that the word 'farming,' and the phrase 'the tillage of the soil,' connected by the disjunctive particle 'or,' in the association in which they occur in the bankrupt act of 1898, are not synonymous—they do not have the same meaning, nor does the phrase

'the tillage of the soil' in such association, serve to limit the meaning of the word 'farming,' so as to mean farming by the tillage of the soil."

Fourth: The court erred in its fourth couclusion of law in holding "that in view of the conclusions above expressed, the respondent is a farmer and 'engaged chiefly in farming' within the meaning of section 4b of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court, therefore, has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein."

Fifth: The court erred in its conclusions of law as applied to the facts found, that the respondent is not subject to be adjudged an involuntary bankrupt.

Sixth: The court erred in holding that it had no jurisdiction in said proceeding to try the issues of insolvency and bankruptcy raised by the petition and answer therein.

Seventh: The court erred in refusing to instruct the jury in accordance with the request of petitioners' counsel, "that the word 'farming,' as used in the act under consideration, is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil,' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

Eighth: The court erred in instructing the jury to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898.

Ninth: The court erred in dismissing petitioners' petition herein to have the said John P. Klug adjudged an involuntary bankrupt.

Tenth: The court committed manifest errors in divers other particulars, as appears upon the record in said proceedings, to the detriment and injury of said petitioners therein. (16.)

ARGUMENT.

The ten assignments of error, taken together, present the single question whether, under the facts of the case, and in the contemplation of the bankrupt act of 1898, the respondent Klug is within the exempted classes of section 4b, of the act, as a person engaged chiefly in farming, or is without the exemption, and liable to be adjudged an involuntary bankrupt. A division of the argument to cover the subject matter of each assignment of error separately is not practicable or desirable, and any effort to so divide and consider the subject would result in much useless repetition. The sixth and ninth assignments of error state in brief terms the ultimate errors of the district court of which appellants complain. A consideration of these assignments will involve a discussion of the errors covered by all other assignments.

Under our view, the respondent Klug's business is not of such a nature that it presents the same reasons for legislative exemption that the vocation "farming" presents; nor is his business one which is designated by the word "farming" as the same is used in its ordinary and popular meaning; and especially is it not designated by the word "farming" as limited by the words "or the tillage of the soil."

POINT I.

The Appellee Klug's Business is not One of Such a Nature that it Presents the Same Reasons for Legislative Exemption that the Vocation of a Farmer Presents.

The legislative reason for the exemption of classes from the operation of the act is plain. The exemption recognizes that there are people whose livelihood is gained by continuous and exacting manual labor, with a minimum of pecuniary gain; who gain nothing or little through the

lucky turns of trade; whose reward is in direct proportion to their physical labor; for whose prosperity continued employment is essential.

It is to the interest of the nation that such may be constantly employed, either as laborers in the mills, on the railroads, or on the farm; if they chance to be tilling the soil, that the crops may be tended, and that they may have the fullest measure of prosperity, and the fullest reward for their labor, and the most liberal opportunity to borrow and repay that which is necessary to supply their needs between harvest periods. Upon the prosperity of such, the prosperity of the nation is rested; and hence it is the policy of the congress of the United States in this and other enactments, and of the legislatures of the various states, to foster and protect such in their pursuits, and save them from annoyance by importunate creditors. The public would suffer, if in their moments of financial weakness such persons could be dragged from their employment to the bankruptcy court.

The business in which appellee Klug was engaged is of a different class. The stock business, *i. e.*, the grazing, raising and trading in cattle, horses and the like, involves primarily the investment of capital not labor; the profits are more the results of natural multiplication and natural conditions, and are *great* in proportion to the labor expended; more analogous in its demands upon the proprietor to mercantile than agricultural pursuits. It is a *business* demanding comparatively mental more than manual effort, and business talents more than constant physical strength. The stock are turned loose to graze, multiply and grow. One man may watch hundreds, keeping them where water and feed are plentiful, and protecting them from depredations. As a class, the stock-grower operates on a larger, more independent basis than a wage-earner or a tiller of

the soil, and neither does he need (as distinguished from the merchant or trader), nor is he entitled, to the protection that is accorded to the wage-earner or farmer. The stock-grower belongs to a class strong enough to stand without special privileges. Since the owner is seldom with the herds, they will not suffer from his non-attendance.

Therefore the public welfare does not demand that the class known as stock-grazers, growers and traders be exempted from the burdens of the bankruptcy act, and unless such a business can fairly be brought within the usual and ordinary meaning of the words "farming or tillage of the soil," their meaning ought not to be perverted to include the class of business in which the appellee Klug is engaged.

The two classes, farmers and stockmen, may merge one in the other, but there is a very great difference between the characteristic types of the two classes, and the appellee Klug is a fair type of the stockman,

While the court below admits that the primary meaning of the word "farming" is to till the soil, he considers it to have been expanded in said countries to include stock growing. We submit that the meaning of the word has not been changed, nor does the word in the western states, as it is popularly used and accepted, include the stockman.

As used in the legislation of Colorado and Washington, the words are used to designate different classes.

See an act of the territorial legislature of Colorado, entitled "An Act to create a lien in favor of ranchmen and *Others*."

"BE IT ENACTED by the Council and House of Representatives of Colorado Territory:

Section 1.—That any ranchman, *farmer*, agistor or herder of cattle, tavern keeper or livery-stable keeper, to whom any horse, mules, asses, cattle or sheep shall

be entrusted for the purpose of feeding, herding, pasturing or ranching, shall have a lien, etc."

General Laws of Colorado, 1861, pp. 349, 350.

See *General Statutes of Washington*, § 1705, which provides:

"That any *farmer*, ranchman, herder of cattle, etc., to whom any cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, caring for or ranching shall have a lien thereon," etc.

See an Act of the territorial legislature of Colorado, entitled "An Act for the Protection of Farmers against the depredations of stock in the counties of Douglas and Weld."

"BE IT ENACTED, etc:

"Section 1. That no person *farming or cultivating land* within the limits of Douglas or Weld counties shall be required to fence or enclose the same against any stock running at large or herded within said counties. All persons owning or having charge of stock, whether cattle, horses, mules, asses, sheep or hogs, shall be required to herd or confine the same in secure enclosures during the season for growing crops, from the time of planting until said crops are gathered," etc.

Session Laws of Colorado, 1864, p. 216, 217.

Article 16, § 6 of the constitution of Colorado provides:

"Section 6. The right to divert unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for *domestic purposes* shall have the preference over those claiming for any other purpose, and those using the water for *agricultural purposes* shall have preference over those using the same for manufacturing purposes."

General Statutes of Colorado, 1883, p. 71.

Construing this section of the constitution of Colorado,

the supreme court of Colorado has held that the right to take water for the appropriator, "his family or his *stock*," is to be classed as a domestic, *not an agricultural use.*

Broadmoor Dairy Company v. Brookside W. & S. Co., 24 Colo. at 546.

The word "farming" means in Colorado what it means in Massachusetts, or Louisiana, *i. e.*, the cultivation of the soil. It would be pernicious to so construe the bankrupt act that the word would have one meaning in New York and another in Montana.

POINT II.

The Appellee Klug's Business Is Not Comprehended by the Word "Farming" as Ordinarily and Popularly Understood.

It is a general and primary rule of interpretation, where there is nothing in the statute to indicate that a word is used in a peculiar or technical sense, that it is to be taken in its *ordinary and popular meaning.*

Maillard v. Lawrence, 16 How., 251-262, at 261;
Greenleaf v. Goodrich, 101 U. S., 284.

We submit that the "ordinary and popular meaning" of the word "farming" is the tillage or cultivation of the soil, and the gathering of the crops. That commonly the purpose of "farming" is to cultivate the soil, and raise and gather the crops for consumption or profit.

There are two cases in which the courts (district courts of the United States) have been called upon to construe and interpret the phraseology of §4b of the bankrupt act of 1898, in determining what constitutes "farming" within the meaning of the act. These cases proceed upon the theory that each case must be decided upon its own circum-

stances, and that it is impracticable to define with precision the facts which will in all cases determine whether one is "engaged chiefly in farming."

In Re Mackey, 110 Fed., 355;
In Re Thompson, 102 Fed., 287.

Resort, therefore, is had to the lexicographers to ascertain the ordinary, generally accepted and primary meaning of the word "farming," and from an examination of the facts of the case at bar, determine whether the appellee Klug was engaged in such occupation or business as the word "farming," giving its ordinary and popular meaning, would embrace. There is no pretense on the part of the appellee to show that the appellee Klug was "engaged chiefly in * * * the tillage of the soil."

Definitions of the Words "Farm," "Farmers" and "Farming," Etc.

"Farmer," "(1) one who *cultivates* hired ground."

"(2) one who *cultivates* ground whether his own or another's.

Johnson's Dictionary.

"Farmer," "(a) one who *cultivates* a farm, a *cultivator* of the fields, an agriculturist, a husbandman."

Imperial Dictionary.

"Farmer," "one who *cultivates*."

Stormouth's Dictionary.

"Farmer," "(2) one who farms or *cultivates* ground; an agriculturist, a husbandman."

Encyclopædic Dictionary.

"Farm," v. "To *till the soil*; to labor as an agriculturist.

"Farmer," n. "(a) one who hires and *cultivates* a farm;

a *cultivator* of leased ground; (c) one who is devoted to the *tillage of the soil;* an agriculturist, a husbandman."

"Farming," n. "The business of *cultivating land.*"

Webster's Dictionary, edition of 1887.

"Farmer," "One who *cultivates* a farm, either as owner or lessee, in *general* one who *tills the soil.*"

"Farming." "The business of *cultivating land* or employing it for the purposes of husbandry; agriculture, husbandry."

"Agriculture" (tilling of land). "The *cultivation* of the ground; especially *cultivation* with the plow and in large areas in order to raise food for man and beast; husbandry, tillage, farming."

Century Dictionary.

"Farmer"—"Farming." "The economy or management of plants; agriculture, *cultivation*," etc.

Roget's Thesaurus of Eng. Words (Sears).

"Farmer." "In *common parlance*, and as a description in a deed, farmer means one who *cultivates* a farm, whether he owns it or not."

Bouvier's Law Dictionary, Rawle's Rev., vol. 1, p. 761.

"Farm." "In *American Law* 'Farm' as a noun, means a tract of land devoted to purposes of agriculture, cattle raising, etc., and as a *verb* its meaning is to *till* or *cultivate lands* as a business."

Rapalje and Lawrence's Law Dictionary, vol. 1, p. 502.

"Farmer" "2. A husbandman or agriculturist, one who *cultivates* a farm, whether the land be his own or another's."

Black's Law Dictionary, p. 478.

"Agriculture." "In its more *common* and *appropriate sense* (i. e.) that species of *cultivation* which is intended to

raise grain and other field crops for man and beast, husbandry, as defined by Webster."

Anderson's Law Dictionary, 45.

"Person actually engaged in the science of agriculture (within meaning of statute of exemption) is one who derives the support of himself and his family, in whole or in part, from the tillage and cultivation of fields."

Black's Law Dictionary, pp. 55 and 56.

"Agriculture." "The *cultivation of soil* for food products or any other useful or valuable growths of the field or garden, tillage, husbandry; also by *extension*, farming, including any industry practiced by *a cultivation of the soil in connection with such cultivation*, as breeding and rearing of stock, dairying, etc.; the science that treats of the cultivation of the soil."

Bouvier's Law Dictionary, Rawle's Rev., vol. 1, p. 124.

Some who are engaged in the raising of crops for profit, find that some part of their crops is more profitable when used to feed and fatten domestic animals for sale. In such a case it might not be unreasonable to say that the raising and feeding of such animals is appendant, auxiliary or incident to the tillage of the soil.

State v. Kennedy, 98 N. C. 657;

In re Thompson, 102 Fed. 287.

It has likewise been held in a case in which a butcher fattened and fed lambs on a farm for slaughter and sale by him in the course of his business, that the feeding and fattening of lambs was not a part of his farming, but a part of his butcher business.

Trustees v. Pettinger, 17 Wend. 265.

As defined by the authorities, the word "farming" is synonymous with "agriculture."

"A person is actually engaged in the science of agriculture when he derives the support of himself and family, in whole or in part, from the *tillage and cultivation of fields.*"

Springer v. Lewis, 22 Pa. St., at 193.

In the case at bar, the findings of fact show that at the time of filing the creditors' petition no part of the feed of the cattle and horses being grazed and kept by the appellee Klug, was the product of tillage or cultivation. The stock grazed upon the natural grass on the range, and in feeding time, were fed in part by the crop of wild hay gathered by Klug, and with greater quantities of hay and grain purchased for the purpose. The main industry was the raising, feeding, grazing and dealing in cattle and horses; and the small quantity of wild hay gathered by Klug or his servants, was but an incident of the business of stock growing.

In the year 1900, Klug did cause some 120 acres of land to be cultivated, and the alfalfa grown thereon to be fed to the cattle and horses, but the products of such cultivation added to the wild hay was not sufficient to supply the needs of the cattle and horses kept by him. Even in the year 1900, the cultivating done by Klug, and his servants, was but an incident of the business of a stockman, which was his primary occupation.

By the language of the bankrupt act of 1898, congress extends protection from the compulsory features of the law with respect to involuntary proceedings, to those persons whose "chief" or principal business or occupation is "farming or the tillage of the soil." The findings of fact in the case at bar show the "chief" or principal business or occupation of Klug, to have been the raising, grazing, breeding, buying and selling and dealing in cattle and horses, or stock. In the very few decisions in which the word "farming," or some of its accepted synonyms have been defined, the general results of the decisions appears to be that the raising of cattle can not be described as "farming" when it is the chief or principal use to which the land is devoted, although it might be included in the term

"farming" when it is merely a subordinate or incidental part of the farmer's business, the chief or principal feature being the raising of crops by planting and cultivation of the ground. In order that Klug may be brought within the exemption, it becomes necessary not only to disregard the universal meaning given the term "farming," *i. e.* the tillage and cultivation of the soil, but to go further than the most liberal meaning which the lexicographers and authorities give the word, *i. e.* that cattle raising may be a branch of farming when incident or appertinent to the cultivation of the soil, and hold that a raiser and grazer of stock, a stock grower or stockman, who makes such occupation his principal and chief and not secondary and incidental business, is a person engaged in "farming." The words or terms representing the business of farming and stock growing have a well defined and different meaning familiar to all persons, and represent distinct occupations, and indeed, antagonistic interests, as the legislation of some states framed to protect the one from the other, clearly indicate. The distortion necessary to fit the term "farming" on a stockman or cattle grower is wholly unwarranted by anything contained in the bankrupt act itself, and was certainly not contemplated by congress.

POINT III.

The Appellee Klug's Business is not Within the Purview of the Word "Farming" as used in the Act, Because the Words "Tillage of the Soil" are to be Understood as a Definition or Explanation of What is Meant by "Farming," and They Operate to Limit the Same in its Application, so as to Mean that "Farming" is the Tillage or Cultivation of the Soil.

We revert to the rule of law heretofore quoted, and

submit that the word "or" between the words "farming" and "the tillage of the soil," should be interpreted in its usual "ordinary and popular" sense.

The word "or" used between synonymous terms has the meaning "to-wit," and thus interpreted it makes the latter of the terms joined thereby a limiting word or phrase to the former.

"The opposition suggested by the'disjunctive particle or' is sometimes merely nominal or verbal; as 'that object is a triangle or figure contained under three right lines'—Harris. 'So if we say, that figure is a sphere, or a globe or a ball. Id.' Hermes, p. 258. In these cases the disjunctive consists in nothing but an alternative of words; for the terms connected describe or name the same thing."

Brown's Grammar of English Grammars, p. 432.

"The members (the words or terms connected by the particle "or") may then be opposed to each other not as to the notion, but only as to the form; in this manner one serves to explain the other."

Metzner's English Grammar, vol. 3, p. 351.

This rule of grammar has received judicial recognition and application in the interpretation of statutes.

Arthur v. Cuming et al., 91 U. S., 362;
Wells v. S. Minn. Ry. Co., 1 Fed. 270, at 272;
Commonwealth v. Grey, 2 Gray 501;
Clifford v. State, 29 Wis. 327.

The phrase "tillage of the soil" is synonymous with the word "farming."

"Synonyms are words that have not the *same* but *similar* meanings."

English Lessons for English People, Rev. G. F. W. Mortimer, B. D., pub. 1886, London.

"Farmer," "signifies one managing a farm, or *cultivating* the ground for a subsistence."

Crabbe's English Synonyms.

"Farmer," n. "1. Agriculturist, husbandman, *cultivator of the* soil."

"Farm." v. n. "*Till the soil.*"

Soule's English Synonyms.

If the word "farming," used in the act under consideration, is given its "ordinary and popular meaning," it will be clearly seen by the foregoing definitions and authorities cited, that it is synonymous with the expression "the tillage of the soil," with which it is there associated; and being synonymous therewith, the disjunctive particle "or," as used, is used in the sense of "to-wit," and the term and expression "the tillage of the soil" serves to explain the word "farming" as used in the act.

We consider it a significant fact, that while §1 of the bankrupt act of 1898 defines "wage-earner," and other words used in the act, it does not attempt to define the word "farming," presumably because the meaning which is intended by congress to be given this word is made sufficiently clear by the use of the synonymous phrase "tillage of the soil," and is intended to be taken in connection with the word "farming" in a qualifying and explanatory sense.

The only authority relied upon by the appellees in the court below, in support of their contention that the appellee Klug was within the excepted classes of §4b of the bankrupt act, and could not be adjudged an involuntary bankrupt, was the case of *In re Thompson*, 102 Fed., 287, decided by the U. S. district court for the northern district of Iowa, June 18, 1900.

The case referred to presents an entirely different state of facts from the case at bar. In the *Thompson* case the parties *stipulated* that the respondent "*was not a cattle-*

raiser." The findings of fact in the case at bar show the appellee Klug to be engaged in the business of raising cattle and also to be in the business of dealing in cattle. The facts in the *Thompson* case show that the respondent in that case was quite extensively engaged in cultivating or tilling the soil. The facts in the case at bar, as appears from the findings of fact, show that the appellee Klug was irregularly, and intermittently and only to the most limited and insignificant extent engaged in cultivating the soil.

While the appellants contend that the interpretation of the bankrupt act of 1898, as laid down by the court in the *Thompson* case, with respect to the conclusions of the court on the questions of construction of the phraseology of section 4, b., is erroneous, and that the court did not apply the proper test to ascertain the meaning of the expression "engaged chiefly in farming or the tillage of the soil," but on the contrary speculated as to how congress might or would have framed and worded the section referred to, had it been the intention to give the phrase the meaning contended for *i. e.* that a person "engaged chiefly in farming" was a person "engaged chiefly in the tillage of the soil;" nevertheless, the facts supporting the decision of the *Thompson* case make the decision in this respect inapplicable to the case at bar, for the facts of the *Thompson* case clearly show the respondent to have been "engaged chiefly in farming" by "the tillage of the soil," his operations in cattle being merely incidental to his business of cultivating the land; and with respect to the case at bar, the findings of fact, on the contrary, show the appellee Klug to have been engaged chiefly in the occupation or business of raising, grazing, buying and selling and dealing in cattle and horses, and any cultivation of the soil done by him being merely incidental and secondary to his cattle business. The ques-

tion to be decided in the case at bar is, whether raising, grazing, buying and selling and dealing in cattle is the business or occupation of "farming" within the contemplation of the bankrupt act of 1898, as it was held to be by the district court. This question was not passed upon in the *Thompson* case, but was eliminated from consideration by the *stipulation of the parties* that the respondent was "not a cattle raiser."

In conclusion we submit that the district court erred in holding that the appellee Klug was within the exceptions enumerated in section 4b of the bankrupt act of 1898, and that it had no jurisdiction to hear and determine the other issues raised by the pleadings, and in dismissing the petition; and, therefore, that its order and judgment should be reversed.

Respectfully submitted,

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April 5, 1902.

No. 599.

Office Supreme Court U. S.
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APR 29 1902
JAMES H. McKENNEY,
Clerk.

Brf. of Shafroth for Appellee

The Supreme Court

Filed April 29, 1902.

OF THE
UNITED STATES.

OCTOBER TERM 1901.

NO. 599.

THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS AND COMPANY, APPELLANTS,

vs.

JOHN P. KLUG AND CHARLES H. WHEELER, APPELLEES.

BRIEF AND ARGUMENT OF APPELLEES.

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Attorney for Appellees

DOLLINS CO. PRINT. 628 CHARLES BLOCK, DENVER.

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BRIEF AND ARGUMENT OF APPELLEES.

Statement of the Case.

This is a proceeding in bankruptcy, instituted

by the appellants, by petition to declare the appellees an involuntary bankrupt (p. 1).

The answer of the appellee denies that the petitioners are creditors, or that he is insolvent, or that he had committed any acts of bankruptcy; denies the allegation of the amended petition that he is chiefly engaged in the business of dealing in and buying and selling cattle and horses, and affirmatively alleges that he is chiefly engaged in farming and therefore cannot be adjudged an involuntary bankrupt (p. 7).

The issues so made by the petition and answer were tried before a jury, and upon the close of the appellants testimony, the court instructed the jury to find the issues for the appellee and that he is a farmer within the meaning of bankruptcy act (p. 11).

The court found (p. p. 12-14) as facts that the appellee has for the past ten years resided in Weld county, Colorado, on a tract of land secured by him from the United States under the homestead and pre-emption laws (finding 1); that during this period he had acquired other contiguous tracts of land until at the time of the institution of these proceedings he owned 2,000 acres (finding 2); that the improvements consisted chiefly of a dwelling-house, barn, cattle-sheds, corrals, wind-mills, watering-holes and sixty miles of fencing (finding 3).

That in addition he had under lease from railroads and the state of Colorado, lands more or less

inclosed, about 18,000 acres (finding 4); that during the year 1900 he purchased 150 acres of land, 80 acres of which was cultivated in alfalfa and oats. This land was sold in the spring of 1891 (finding 5); that during 1900 he leased a tract of land of 35 or 40 acres, which was cultivated in alfalfa. The larger tract of land above mentioned was mostly what is known as grazing land; from 400 to 700 acres was in a superior quality of hay known as blue joint (finding 7).

The large tract of land was not irrigated and the hay crop raised upon it depended upon natural conditions. The wild hay crop varied from 200 to 400 tons (finding 10). The 80 acre tract of land produced about 185 tons of alfalfa and the 40 acres of leased land, about 75 tons of alfalfa (findings 10 and 11).

About 10 or 15 acres were cultivated in a garden and small grains (finding 12). He had the usual necessary farming implements (finding 13). For three years prior to the institution of these proceedings he kept from 500 to 700 head of horses also a herd of cattle, averaging about 2,000 head, the greater part of which were cows (findings 14 and 15).

He purchased a considerable amount of hay and grain to feed the cattle and horses (finding 16). That during three years he had purchased and sold cattle aggregating 1,200 head (finding 17).

That the letter heads on his stationery stated that he was a dealer in as well as a breeder in cattle and horses (finding 18). He was not chiefly engaged in the tillage or cultivation of the soil, and the horses and cattle kept and fed by him were not sustained chiefly by the wild and cultivated hay crops, produced from the land (finding 19); that he was chiefly engaged in buying, selling, breeding and raising horses and cattle which were grazed upon the land belonging to him and which he had leased, and the public range, and were fed with wild and cultivated hay crops, produced from said land and with hay and grain purchased from others in quantity and value in excess of the crops produced from the said land.

Point I.

We believe that if all the evidence taken upon the trial was before this court it would materially aid in determining the question involved, but sufficient appears from the findings of fact to establish that the the appellee was a farmer within the meaning of the act, and could not be adjudged an involuntary bankrupt. The act under consideration is as follows:

"Any natural person, except a wage-earner or a person engaged chiefly in farming, or the tillage of the soil, * * * may be adjudged an

involuntary bankrupt * * * ."

National Bankruptcy Act 1898, sec. 4 (b).

The exemption is not confined to persons *exclusively* engaged in farming, but it includes those who are *chiefly* so engaged. The act also clearly recognises that a person may be engaged in farming though not a tiller of the soil, for it not only includes persons engaged chiefly in farming, but those chiefly engaged in the tillage of the soil, thereby exempting from its provisions all persons chiefly engaged in one or more of the several branches of farming.

The word "farmer" as used in the statutes is one of very broad meaning. We take it to include every one who settles upon a piece of land to make for himself a home and a living by the use of the land, either husbanding its natural products or adding to its production and the value of its products, or both. He may build house, barns, fences, etc. and use all lawful means to make the land useful and efficient to him as his judgment may dictate. To cultivate the land either by raising cotton, sugar cane, corn, wheat, oats, potatoes or the grazing of stock, or raising fruit or, in a word, to plant to whatever climate the nature of the soil, surrounded by commercial facilities may be profitable.

The nature or kind of product he may attempt to procure or the amount of land he plows, does

not change him from a farmer to something else. When so located and so employing himself, whether a fruit grower in Louisiana, a wheat grower in Michigan, a sheep grower in New England, or a producer of numberless land products in Illinois, he is still a farmer.

His success or his failure does not change that fact. He may try one product and fail—he may then try another, or try a great variety, he is yet a farmer.

Take this case as it stood before the trial court. John P. Klug took up a tract of government land, according to the laws of the United States. It was a wild unused tract of land; he built him a house, fenced it, and placed other improvements thereon, got him a few cows and started to build up a home in the country. He raised cattle, made butter, raised domestic fowls and worked the land in the most profitable way.

Finding the land dry, not well adapted to the plow, he used it principally for grazing and haying purposes. To have plowed under the natural grass on the greater part of this land would have been to destroy its value. By using it as he did he made it of great value and from year to year bought other pieces of land which he fenced and added to the first—and as he became able, bought other stock, adding it to the first. He sold cattle, horses, etc. as they became fit for market—con-

tinued to increase the breeding capacity of the farm by buying other bunches of stock from time to time, thus enlarging his business and selling such as he had grown to a condition for market.

During the grazing seasons he pastured this stock upon his own land. When the winters were hard and the hay grown upon his own land was insufficient to feed his stock, he bought feed from outsiders for the purpose of carrying it through to grass against.

The main feed that developed his stock and caused its growth was the green grass on which he grazed them, through the greater part of the year, in his own pasture and on his own land. The buying of any outside feed was simply a necessary incident to assist in his farming operations and by no means a business, but an incident to a business. The same, in buying outside bunches of stock and selling the same when fitted for market was an absolute and indispensable incident to keep up the necessary and growing expenses of the farm. The 2,000 head of horn cattle which he had, were practically all cows, kept for breeding purposes.

Nor do we think that under the circumstances, his advertising upon his letter heads that he had horses and cattle to sell, would be any evidence that he was not a farmer.

Point II.

The decisions defining a Farm, Farming, Lands, Products of Farm and Agriculture, taken together with the definition of these words when applied to the facts in this case, bring the appellee clearly within the exemption mentioned in the statute.

Edmond Plowden in his commentaries published in England, 1816, page 95, says: "A farm is a collective word consisting of diverse things collected together, whereof one is a messuage and the others are the lands, meadows, pasture, woods, commons and other things lying or appertaining thereto."

"A large tract or portion of land taken by a lease under a yearly rent, payable by a tenant. From this latter sense, is derived its common, modern signification of a large tract used for cultivation or other purposes, *as raising stock*, whether hired or owned by the occupant, including a messuage with out-buildings, gardens, orchards, etc.

Plowden (p. 95); Touchstone (p. 93).

"The word 'farm' originally meant, rent, and by mutual transition has come to be made the land out of which the rent issues. In American law, 'farm' denotes a tract of land *devoted in part at least, to the cultivation for agricultural purposes,*

without reference to its extent or the tenure by which it is held."

Black's Law Dictionary.

Bouvier's Law Dictionary defines a farm to be "a portion of land used for agricultural purposes, *either wholly or in part.*"

"A tract of land devoted to *general or special* cultivation under a single control, whether that of its owner or tenant, as a small farm, a wheat, fruit, dairy or market farm."

Century Dictionary.

"Then, at my farm,
I have a hundred milch kine to the pail,
Six score fat oxen standing in my stalls.
And all things answerable to this portion."

Shakespeare's Taming of the Shrew;
Act II, Scene I.

Farming. "The business of cultivating land *or employing it for the purposes of husbandry;* agriculture, husbandry."

See Appellant's Brief (p 15).

"In American Law 'farm' as a noun, means a tract of land devoted to purposes of agriculture, *cattle raising*, etc."

Appellant's Brief (p. 15).

In re Slade's Estate, 122 Cal. 434, 436, 439.

55 P. 158, is a case which arose under the California statute, exempting the farming utensils or implements of husbandry of the judgment debtor etc. and which should be set off to the widow.

The deceased left an estate worth $30,000, consisting of 300 acres of land in one body, 150 acres of which was in an orchard, and 10 acres in a garden, and the balance in hay. And in determining what implements should be set off to the widow, it was contended that the deceased carried on three distinct occupations, towit: farming or agriculture, fruit growing or horticulture and grape growing or viticulture; that the widow was only entitled to take under one of these occupations and no more.

Judge Chapman in delivering the opinion, page 159, Pac. R. says: "We do not think that when a person engages in diversified farming, the law exempts only such of his farming utensils or implements as he may use in some one of the separate branches of his farming operations. Webster defines a farmer to be one who is devoted to the tillage of the soil, an agriculturist, a husbandman, and farmer he defines to mean the business of cultivating land. He defines husbandry to mean the business of a farmer comprehending the various branches of agriculture. The followers of this ancient and honorable occupation may call themselves, 'agriculturists' or 'viticulturists' or 'garden-

ers,' but they are farmers, and their occupation is that of farming as contemplated by the statute. The law does not deal with classes of husbandry, nor does it limit the exemptions to one particular class of husbandry out of many that may be followed by the debtor."

"In bankruptcy act, 1898, sec. 4 (b) exempting from liability to adjudication involuntary bankruptcy 'persons engaged chiefly in farming or the tillage of the soil,' the latter phrase does not limit the former, hence a person whose principal occupation is raising cattle and hogs for the market, his farm being devoted chiefly to use as pasture land and for raising grass, hay and corn wherewith to feed and fatten the stock, is not subject to be adjudicated bankrupt on the petition of his creditors, being a farmer, though not a tiller of the soil."

In re Thompson, 102 Fed. 287.

In construing the provisions of a statute in North Carolina exempting the products of a farm from liquor tax the court says: "The words of the statute to be interpreted are the products of his own farm. Now a farm, the farm, his farm in the ordinary sense implies land cultivated, *used in some way for the purposes of production by the owner thereof*, or some other person having a temporary estate or interest therein, and land whether covered

by forest or not, adjoining or near and made subservient thereto and used in aid thereof for the purposes of producing grain, such as wheat, Indian corn, rye, barley, cotton, fruits, hay, vegetables and the like, and perhaps live stock such as cattle, sheep, horses, swine and the like, by transmutation directly or indirectly brought about by the cultivation of the soil."

State vs. Kennerly, 98 N. Carolina, 659.
See also Am. & Eng. Enc. of Law, 2d Ed. Vol. 12, pp. 881 and 882.
Bur. Law Dict. Farm.

A farm is both by the standards and in common law acceptation defined to be a body of land usually under one ownership devoted to agriculture, either to the raising of crops or pasture or both.

It is not understood to have any necessary relation to or to be circumscribed by political or congressional subdivisions. A farm may consist of any number of acres, of one quarter section or less, or many quarter sections; of one field or many fields; may lie in one township and one county or in more than one.

Rogers vs. Cadwell, 142 Ill. 434.

The several definitions of "farm and farming" cited from dictionaries by counsel for appellant sustain the contention that the appellee is a farmer within the exemption of section 4 (b) of the act.

The citation of certain provisions from the statutes of Colorado made by counsel for appellant in their brief, are irrelevant and without application.

The statute relating to herding of cattle in Douglas and Weld counties, Colorado, (long since repealed) cited by counsel was only passed to regulate the driving of cattle through those counties and to prevent trespass by herders. A herder as defined in statutes is one employed to guard and care for cattle. He is not a cattle farmer, nor necessarily even an owner but one to whom for a season cattle may be entrusted for feeding and care.

The distinction between "domestic" and "agricultural" use of water cited by counsel for appellant gives preference to animal life rather than to the earth, which would still exist without water.

This distinction in no wise carries with it the discriminating force for which counsel for appellant contend. Nor can it in anywise be construed as a definition of the words "farmer" and "farming."

Respectfully submitted

JOHN F. SHAFROTH,

Attorney for Appellee.

Supreme Court of the United States.

No. 599.—October Term, 1901.

The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris & Company, Appellants, *vs.* John P. Klug and Charles H. Wheeler. } Appeal from the District Court of the United States for the District of Colorado.

[June 2, 1902.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

The bankrupt act provides: "Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act." § 4*b*.

In this proceeding by petition in involuntary bankruptcy filed against John P. Klug, a trial before a jury was had on the issue whether Klug was "engaged chiefly in farming," within the meaning of the act. The District Court, upon the evidence, directed the jury to find that Klug was a farmer and engaged chiefly in farming, within the meaning of the act, and, the jury having found accordingly, entered judgment dismissing the petition with costs. Petitioners prayed an appeal directly to this court, which was allowed, and the District Court thereupon made and filed its findings of fact and conclusions of law in pursuance of the third subdivision of General Order in Bankruptcy, XXXVI.

Section 24 of the bankrupt act provides:

"*a*. The Supreme Court of the United States, the Circuit Courts of Appeals of the United States, and the Supreme Courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.

"*b*. The several Circuit Courts of Appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved."

Our jurisdiction of this appeal depends on the act of March 3, 1891, by the fifth section of which an appeal or writ of error from or to the Circuit or District Courts will lie directly "in any case where the jurisdiction of the court is in issue," and in such cases "the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision." In this case there is no such certificate, and, moreover, the District Court had and exercised jurisdiction. The conclusion was, it is true, that Klug could not be adjudged a bankrupt, but the court had jurisdiction to so determine, and its jurisdiction over the subject-matter was not and could not be questioned. *Mueller* v. *Nugent*, 184 U. S. 15; *Louisville Trust Company* v. *Comingor*, Id. 25; *Smith* v. *McKay*, 161 U. S. 355.

It is not contended that the case falls within either of the other classes of cases mentioned in section five.

Section 25 provides:

"*a*. That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the Circuit Court of Appeals of the United States, and to the Supreme Court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

"*b*. From any final decision of a Court of Appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

"1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

"2. Where some justice of the Supreme Court of the United States shall certify that, in his opinion, the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States."

This appeal does not come within those provisions.

Subdivision *d* of the same section is: "Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted."

The words "bankruptcy proceedings" are used in this section in contradistinction to controversies arising out of the settlement of the estates of bankrupts, as they are also so used in sections 23 and 24. The certification referred to is that provided for in sections 5 and 6 of the act

of March 3, 1891, and this case in that particular does not fall within those sections.

Apart from section 25, the Circuit Courts of Appeals have jurisdiction on petition to superintend and revise any matter of law in bankruptcy proceedings and also jurisdiction of controversies over which they would have appellate jurisdiction in other cases. The decisions of those courts might be reviewed here on certiorari, or in certain cases by appeal, under section 6 of the act of 1891. *Mueller* v. *Nugent*, 184 U. S. 1; *Huntington* v. *Saunders*, 163 U. S. 319; *Aztec Mining Company* v. *Ripley*, 151 U. S. 79, 81.

But the question before us is whether this appeal was properly brought, and we do not think it was.

Appeal dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.